LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

301 State House
(317)232-9855

ADMINISTRATIVE RULE
FISCAL IMPACT STATEMENT

PROPOSED RULE: 01-206 **DATE PREPARED:** Dec 26, 2001
STATE AGENCY: Office of the Sec. of Family and Social Services **DATE RECEIVED:** Nov 14, 2001

FISCAL ANALYST: Kathy Norris
PHONE NUMBER: 234-1360

<u>Digest of Proposed Rule:</u> This rule amends 405 IAC 2-3-1.1 to specify the method for calculating the Medicaid eligibility penalty for transferring income. It specifies that when the right to a stream of income is transferred for less than fair market value, the penalty is calculated based on the projected total income expected to be transferred during the individual's lifetime. The rule specifies that a transfer of income includes, but is not limited to, (1) transferring income-producing real property; and (2) accepting less than the fair market rental value when property is rented. The rule also specifies that, for purposes of the Medicaid eligibility penalty for transferring assets for less than fair market value, "assets" includes any income or resources which the applicant or recipient or the applicant's or recipient's spouse is entitled to receive, but does not receive because of failure to take action to receive those assets. It repeals 405 IAC 2-3-1.

<u>Governmental Entities:</u> The rule revision is expected to decrease state Medicaid expenditures for nursing home care by increasing the amount of an individual's income that is used to pay for care. The savings to the state would be approximately 38% of the increased income used on behalf of a Medicaid recipient. The Office of Medicaid Policy and Planning estimates this rule revision would save the state $4.5 M in state General Funds. This rule places no unfunded mandates upon state government.

This rule will have no local fiscal impact. It will also result in no unfunded mandates upon any political subdivision.

Background: This rule addresses an ambiguity in current statute that allows Medicaid applicants and recipients to transfer the income associated with income-producing property without penalty. It would prevent applicants or recipients from renting property for less than fair market value or disposing of rental property and the income stream it produces without penalty. This artificial reduction in income increases the cost to the state by reducing the income available to the recipient to contribute towards the cost of the individual's care. Federal law requires a transfer penalty be imposed for transferring income, however, the method of calculating the penalty and the rounding assumptions that are applied under current regulations result in no penalty assessment. The rule revision will provide for a lump-sum method for calculating the penalty period when income or the right to receive income is transferred.

This rule does not revise the existing Medicaid exemption for income-producing property, nor does it impose a penalty for the transfer of the property in the determination of Medicaid eligibility. The rule deals with the treatment of the income stream the property is expected to produce and the transfer of that income. This proposed rule would reduce the state's expenditure for Medicaid services by the amount of the penalty imposed or by the amount of assets that recipients are required to contribute towards the cost of their care. The Office of Medicaid Policy and Planning estimates that this rule could reduce state expenditures by $4.5 M annually (about $12 M annually in total expenditures, both state and federal).

The proposed revision also specifies that a transfer of income includes failure to take action to receive assets to which one is legally entitled. If a Medicaid recipient spouse fails to claim assets of an estate to which he or she is entitled, a transfer penalty will be imposed. A surviving spouse in Indiana is entitled to up to half of a decedent's estate regardless of the terms of a will. In this scenario, the non-Medicaid recipient spouse executes a will leaving few or no assets to the spouse who receives Medicaid. If the surviving spouse is a Medicaid recipient who fails to take action in order to receive the share of the estate to which he or she is entitled, a transfer penalty would be imposed under the terms of this rule. This rule is a codification of existing policy and so is estimated to have no fiscal impact. It is anticipated that the rule will result in more consistency in the way it is applied throughout the state.

Regulated Entities: This rule affects individuals who are attempting to shelter available assets and qualify for Medicaid benefits. Individual applicants and Medicaid recipients affected by this rule are those who have some financial ability to contribute to their care. The Office of Medicaid Policy and Planning estimates that this rule could increase these individuals' expenditures by $12 M annually.

Information Sources: Donna Stolz Sembroski, Staff Attorney, FSSA, Office of General Counsel.